

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

AARON COOK,

Defendant-Appellee.

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UNPUBLISHED

March 23, 2004

No. 245018

Wayne Circuit Court

LC No. 02-001452-02

Before: Zahra, P.J., and Saad and Schuette, JJ.

MEMORANDUM.

Plaintiff appeals by delayed leave granted defendant's sentence of six months to two years in prison imposed on his plea-based conviction of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv). We vacate defendant's sentence and remand for resentencing. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The offense of which defendant pleaded guilty carried a mandatory prison term of not less than one year nor more than twenty years in prison, or lifetime probation. The applicable statutory sentencing guidelines recommended a minimum term range of zero to seventeen months. The trial court sentenced defendant to six months to two years in prison, with credit for 117 days, citing defendant's efforts at rehabilitation as support for its decision.

Under the sentencing guidelines act, a trial court must impose a sentence in accordance with the appropriate sentence range. MCL 769.34(2). The sentence must comport with any applicable minimum sentence, and such a mandatory minimum sentence is not a departure from the statutory sentencing guidelines. MCL 769.34(2)(a); *People v Izarraras-Placante*, 246 Mich App 490, 497; 633 NW2d 18 (2001). A trial court may depart from the statutory sentencing guidelines if it has a substantial and compelling reason to do so. *People v Hegwood*, 465 Mich 432, 439; 636 NW2d 127 (2001). To constitute a substantial and compelling reason for departing from the guidelines, a reason must be objective and verifiable, must irresistibly attract the attention of the trial court, and must be of considerable worth in determining the length of the sentence. The reason for the departure must be articulated by the trial court on the record. MCL 769.34(3). A substantial and compelling reason articulated by a trial court to merit a departure from the sentencing guidelines must justify the departure at issue. *People v Babcock*, 469 Mich 247, 257-261; 666 NW2d 231 (2003).

We vacate defendant's sentence and remand for resentencing. Because the upper limit of the recommended guidelines range was eighteen months or less, the trial court was required to impose a sentence of lifetime probation absent a departure from the guidelines. MCL 769.34(4)(b). If the trial court concluded that a departure from the guidelines was warranted, it was required to articulate substantial and compelling reasons for its decision, to impose a minimum term based on those reasons, and to impose the statutory maximum term of twenty years, *People ex rel O'Dell v Bannan*, 365 Mich 429, 431; 113 NW2d 220 (1962), or, because defendant had a previous narcotics conviction, a maximum term of forty years, MCL 333.7413(2). The trial court neither imposed a sentence of lifetime probation nor articulated anything about defendant's efforts at rehabilitation that demonstrated that the efforts constituted a substantial and compelling reason for departing from the guidelines. *Babcock, supra*. Defendant's sentence did not comport with the applicable statutes and was not supported by substantial and compelling reasons for departing from the guidelines. Resentencing is required.

Vacated and remanded. We do not retain jurisdiction.

/s/ Brian K. Zahra  
/s/ Henry William Saad  
/s/ Bill Schuette